

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**IN RE: JOHNSON & JOHNSON  
TALCUM POWDER PRODUCTS  
MARKETING, SALES  
PRACTICES, AND PRODUCTS  
LIABILITY LITIGATION**

***THIS DOCUMENT RELATES TO:***

**THE FERRARO LAW FIRM,  
P.A.'S MOTIONS FOR RELIEF  
FROM COMMON BENEFIT FEE  
ASSESSMENTS (ECF DOC. NOS.  
26550 AND 26551)**

**MDL NO. 16-2738 (FLW) (LHG)**

**PLAINTIFFS' STEERING COMMITTEE'S MOTION FOR LEAVE TO  
FILE A SUR-REPLY TO THE REPLY RELATING TO  
THE MOTIONS FOR RELIEF FROM CMO 7(A)  
FILED BY THE FERRARO LAW FIRM, P.A.**

The Plaintiffs' Steering Committee ("PSC") hereby moves the Court for leave to file a sur-reply brief to the reply filed by the Ferraro Law Firm, P.A. ("Ferraro") to the PSC's opposition to the Motions for Relief from CMO 7(A).

Ferraro's reply brief goes beyond replying to the arguments that the PSC made in its opposition to the Motions. Beyond the ad hominim attacks on Co-Lead Counsel

Leigh O'Dell and the PSC generally, the reply brief raises such new issues as the following that the PSC desires to respond to<sup>1</sup>:

1. Ferraro is entitled to an exemption because the PSC allegedly failed to inform J&J that the Ferraro cases are subject to an assessment and what the assessment percentage should be;
2. The conduct of Leigh O'Dell and the PSC allegedly prejudiced Ferraro's ability to pursue cases and prevented the J&J Defendants from fully funding the negotiated settlements;
3. CMO 7(A) and the assessment is not applicable to Ferraro because provisions of CMO 7(A) were not satisfied;
4. The PSC somehow has waived opposing the Motion;
5. Ferraro's argument that though it generally does not oppose the idea of common benefit assessments, Ferraro desires an omnibus exemption for all of its cases even after executing the Participation Agreement;
6. That Ferraro's attempt to minimize the fact that he did not oppose the motion for the entry of CMO 7(A) fails to recognize that it in fact waived its ability to challenge CMO 7(A) after the fact;
7. Ferraro's Reply ignores well-settled law that common benefit assessment proceedings are not to engage in secondary litigation over what use of common benefit work product and what benefits an attorney may have had from an MDL;
8. Ferraro's incorrect interpretation that an assessment applies only if there is some evidence that the attorney actually "used" common benefit work product;
9. Ferraro's argument that because there is some alleged ambiguity in the percentage holdback to apply to its cases, there should be no holdback.

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1. The PSC's proposed sur-reply brief is attached hereto as Exhibit "A".

Therefore, the PSC hereby moves the Court for leave to file a sur-reply brief to the reply filed by the Ferraro Law Firm, P.A. (“Ferraro”) to the PSC’s opposition to the Motions for Relief from CMO 7(A).

A proposed form of Order has been submitted with this motion.

Dated: January 18, 2022

Respectfully Submitted,

/s/ P. Leigh O'Dell

P. Leigh O'Dell  
BEASLEY, ALLEN, CROW, METHVIN,  
PORTIS & MILES, P.C.  
218 Commerce Street  
Montgomery, AL 36104  
Tel: 334-269-2343  
Fax: 334-954-7555  
[Leigh.odell@beasleyallen.com](mailto:Leigh.odell@beasleyallen.com)

/s/ Michelle A. Parfitt

Michelle A. Parfitt  
ASHCRAFT & GEREL, LLP  
1825 K Street, NW, Suite 700  
Washington, DC 20006  
Tel: 202-783-6400  
Fax: 202-416-6392  
[mparfitt@ashcraftlaw.com](mailto:mparfitt@ashcraftlaw.com)

***Plaintiffs' Co-Lead Counsel***

/s/ Christopher M. Placitella  
Christopher M. Placitella  
COHEN, PLACITELLA & ROTH, P.C.  
127 Maple Avenue  
Red Bank, NJ 07701  
Tel: 732-747-9003  
Fax: 732-747-9004  
[cplacitella@cprlaw.com](mailto:cplacitella@cprlaw.com)

***Plaintiffs' Liaison Counsel***